

SCHIFF HARDIN & VAITE

A Partnership Including Professional Corporations

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September 2, 1986

Site: Cyber March
ID #: 1200979633069
Other: AK
9-2-86

Federal Express

J. Scott Pemberton, Esq.
U. S. Environmental
Protection Agency
EPA Region VII
726 Minnesota Avenue
Kansas City, Kansas 66101



Re: Rose Chemical Facility

Dear Mr. Pemberton:

I am writing on behalf of the Rose Chemical Steering Committee, an ad hoc group of companies who may be potentially responsible parties (PRPs) with respect to the Rose Chemical Facility. The purpose of this letter is to memorialize the discussion representatives of the Steering Committee had with Region VII on August 21, 1986 and the decisions of the Steering Committee with respect to the requests made by Region VII.

1. Fence. Region VII requested that an appropriate perimeter fence be constructed around the Rose facility by the group. Work on this matter, starting with the necessary surveying, began last week. The area within the fence shall be defined as "on-site" for purposes of the "Statement of Work" plan.

2. Removal of Certain non-PCB Materials. Region VII requested the immediate removal of certain non-PCB materials exhibiting ignitable or reactive characteristics, including liquid sodium. As explained at the August 21, 1986 meeting, while this request presented no major technical or physical problems, it does raise numerous, complicated legal problems caused by the uncertainties of ownership of the materials, the limitations on the Steering Committee's right of access, right of removal and other rights on the site and the pending Rose bankruptcy proceeding.

Although the Steering Committee is willing to provide for the removal of these non-PCB materials, it was agreed that EPA would draft a letter directing the removal of these materials and this letter would be presented to the bankruptcy court to attempt to obtain its approval for our emergency removal action. On August 28, 1986 I received EPA's letter of authorization and it certainly will be helpful. I sent a copy to counsel in the bankruptcy proceeding and discussed it with him and we are collecting the information he believes the court or trustee will require. For your information a trustee has been appointed but has not yet agreed to accept the appointment. I will apprise you of the court's and/or trustee's reaction to EPA's immediate removal authorization and I may request EPA to respond to any additional inquiries by the court.

RECEIVED

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SUPERFUND BRANCH

REC'D

SEP 03 1986

EPA CNSL
REGION VII

Cy sent to: A. Spratlen

R. Morley

H. Rompage

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J. Scott Pemberton, Esq.

September 2, 1986

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One additional issue, which was not discussed at our meeting, may require the prompt attention of EPA. Some of the non-PCB materials have commercial value and, therefore, can be removed from the site for use free of any RCRA regulation. However it is probable that other materials have no commercial value or are spent or contaminated causing them to be disposed of as RCRA-regulated wastes. As RCRA wastes, these materials need a generator ID number, unless EPA exempts these materials from RCRA regulation. Because the PRPs do not currently have a distinct legal status the PRPs cannot obtain a generator ID number.

To resolve this problem we were going to suggest that EPA issue a number in the name of Rose Chemical and authorize the PRPs to remove non-PCB materials using Rose's ID number. This approach would correctly reflect the PRPs volunteer status regarding the non-PCB materials, and accurately ascribe liability to Rose. In my conversation Friday with Mr. Tripp and others at the Region I raised this issue. There was no indication of a willingness to exempt these materials; I was merely informed that Missouri has RCRA permitting authority and it was suggested that our contractor could get the permit.

The difficulty is that the PRPs clearly are not liable for non-PCB materials at Rose. As EPA is aware the Rose site is unusual because all PRPs sent the same chemical, namely PCBs. Under CERCLA §§106 and 107, the Rose PRPs may be liable as "generators" for only that one chemical -- PCBs. Thus, the PRPs are volunteers, not generators, and should not be exposed to potential liability for non-PCB materials at Rose. Thus it may be necessary to obtain this and other permits in the name of trustee (as I believe has been done in other CERCLA proceedings). Should you or any of the people at Region VII with whom I discussed this problem think of any other creative solutions, we are certainly open to suggestions

3. Liquid PCBs. Region VII personnel at our August 21, 1986 meeting and in our telephone discussion on August 22, 1986, have requested that the Steering Committee adequately secure and contain the liquid PCBs located in certain large, external tanks and in a large pit at the Rose facility. The Steering Committee is willing to undertake this task which initially will involve identifying and securing existing or potential leakage; draining, containerizing and properly storing the liquid in the pit. We have developed the plans to implement this action and expect the work to begin this week.

4. Sampling. Region VII requested the development of a sampling plan and that certain sampling be undertaken as promptly as possible. The sampling of immediate concern to Region VII involved the creek, the sewer line, the tanks referred to in Item 3 above and the pit. We will begin this sampling on Wednesday, September 3. We have discussed this with Mr. Hess and he plans to be there tomorrow.

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Several other items were discussed on August 21 and 22 but, I believe, the above-referenced matters were the ones of primary concern to EPA. Nonetheless, some of these other items I believe warrant mentioning.

As to the Administrative Order on Consent, you will by now have received our comments on EPA's draft and I will not reiterate those but there is one subject I believe needs to be emphasized. As you are aware, the PRPs took the initiative on the Rose matter about 4 months ago and want to work cooperatively with EPA on a sound, cost-effective and efficient clean-up. As a result of our efforts we believe the project is far ahead of any schedule that would occur under CERCLA where clean-up is sought from the PRPs; similarly the PRPs schedule is probably more expeditious than a direct EPA clean-up.

Our prompt clean-up schedule benefits everyone but depends on the active participation, cooperation and creative assistance of EPA. Frankly, the PRPs reviewed EPA's draft AOC and were not convinced that EPA is using its broad authority to assist the PRPs in solving the many problems that have and will continue to arise in connection with the Rose clean-up project. As the Rose clean-up proceeds, the PRPs will likely call on EPA to help remove obstacles impeding the clean-up, and obtaining the participation of other PRPs. Quite candidly the long delay after we submitted a draft AOC and then the sudden demand for instantaneous action together with the EPA's draft AOC has caused a great deal of concern among the PRPs, not the least of which now questions the merits and risks of our taking the initiative. I hope that we can proceed rationally, efficiently and effectively which a further piecemeal approach could seriously undermine.

Related to the AOC is the Statement of Work (SOW) which was attached to our draft AOC. You indicated that the SOW (dated July 11, 1986) is satisfactory if certain specifics are added. We always have intended to perform such an inventory as is necessary to a rational approach to the site. Currently our people are working on revising the Statement of Work along the lines you suggested.

Finally, you also mentioned in that conversation that EPA had located certain equipment removed from the site belonging to American Steel Works, Inc. and the equipment is contaminated. This again raises several serious questions, not only along the ownership or title lines, but also as to who is responsible for decontamination or disposal of this equipment. The PRPs have no responsibility for the equipment and EPA should consider its enforcement options against Rose or American Steel. The PRPs expect EPA to aggressively pursue its legal remedies against American Steel about this equipment and not look to the PRPs to cure every pollution problem related to Rose's activities.

If you have any questions on any of these matters or wish to discuss any of them, do not hesitate to call me.

Very truly yours,


Sheldon A. Zabel

SAZ/mab
cc: Mr. David Tripp

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FOIA Exemption 5

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FOIA Exemption 5

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